

Message Text

CONFIDENTIAL

PAGE 01 STATE 272393

43

ORIGIN EB-07

INFO OCT-01 ARA-06 ISO-00 FMC-01 STR-04 COME-00 CIAE-00

DODE-00 DOTE-00 INR-07 NSAE-00 CG-00 OFA-01 DLOS-04

L-03 AS-01 TRSE-00 /035 R

DRAFTED BY EB/TT/MA:SVSMITH:PST

APPROVED BY EB/TT/MA:RK0ANK

MARAD:JHOEN

FMC:WJSMITH (SUBS)'

ARA/BC:RHECHTMAN

STR:SCOFFIELD (PARA 4)

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R 180017Z NOV 75

FM SECSTATE WASHDC

TO AMEMBASSY SANTIAGO

C O N F I D E N T I A L STATE 272393

E.O. 11652: GDS

TAGS: EWWT, CI

SUBJECT: DISCRIMINATORY SHIPPING DECREE

REFERENCE: SANTIAGO 7605

1. DEPARTMENT IS PLEASED THAT EMBASSY HAS BEGUN INFORMAL DISCUSSIONS WITH FOREIGN OFFICE PER PARAS 9 AND 10 REFTEL. EMBASSY SHOULD CONTINUE THESE DISCUSSIONS AT HIGHEST APPROPRIATE LEVEL STRESSING OUR CONCERN OVER THE DISCRIMINATORY NATURE OF THE NEW CHILEAN PRACTICES AND EMPHASIZING TO CHILEAN OFFICIALS THE POSSIBLE CONSEQUENCES IF THESE PRACTICES SHOULD CONTINUE.

2. SHOULD THE PRACTICES CONTINUE, EMBASSY HAS CORRECTLY IDENTIFIED FEDERAL MARITIME COMMISSION (FMC) PROCEDURES UNDER SECTION 19 OF THE MERCHANT MARINE ACT OF 1920

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 272393

AS THE LIKELY RESULT. THE FMC IS EMPOWERED BY SECTION

19 TO TAKE ACTION, UNDER ITS REGULATIONS, TO MEET "CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES." WE HAVE NO DOUBT THAT RESERVING RIGHT OF FIRST REFUSAL FOR ALL CHILEAN EXPORTS TO CHILEAN VESSELS WOULD BE VIEWED AS SUCH A CONDITION BY THE FMC AND WE WOULD SUSPECT THAT SHOULD THIS CONDITION CONTINUE TO PREVAIL, THE FMC WOULD TAKE ACTIONS TO MEET THESE CONDITIONS. POSSIBLE FMC ACTIONS TO MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES ARE NEARLY UNLIMITED, AND COULD INCLUDE LIMITATION OF CHILEAN FLAG SAILINGS TO AND FROM THE U.S. AND SUSPENSION IN WHOLE OR IN PART OF ANY OF THE TARRIFS FILED BY CHILEAN LINES WITH THE COMMISSION. FMC ACTION OUTLINED ABOVE WOULD NOT COME IMMEDIATELY, BUT WE WOULD SUSPECT THAT SHOULD U.S. SHIPPERS OR SHIPPING LINES MAKE CONCERTED COMPLAINTS TO FMC, COMMISSION WOULD EVENTUALLY FORMALLY ASK THE DEPARTMENT OF STATE TO RESOLVE THE DISCRIMINATORY SITUATION DIPLOMATICALLY. AT THE SAME TIME, THE FMC WOULD PROBABLY PROVIDE A DRAFT REG'LATION SPECIFYING THE FMC'S ACTION TO MEET THE CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES. WHILE WE CANNOT BE CERTAIN, FMC WOULD PROBABLY GIVE DEPARTMENT APPROXIMATELY 60 DAYS WITHIN WHICH TO SOLVE THE PROBLEM DIPLOMATICALLY BEFORE IMPLEMENTING SUCH A REGULATION. EMBASSY SHOULD BE AWARE THAT WHILE ABOVE LIKELY WOULD BE THE CASE, FMC IS NOT BOUND BY LAW TO ASK FOR DEPARTMENT'S DIPLOMATIC ASSISTANCE IN RESOLVING DISPUTES BEFORE IT ACTUALLY PUBLISHES REGULATIONS DESIGNED TO EQUALIZE TREATMENT OF CARRIERS IN A TRADE.

3. EMBASSY AND CHILEAN GOVERNMENT SHOULD REALIZE, HOWEVER, THAT SECTION 19 PROCEDURES OUTLINED ABOVE ARE NOT THE ONLY POSSIBLE STEPS USG MIGHT BE REQUIRED TO TAKE IF CHILEAN DISCRIMINATION CONTINUES. DEPARTMENT UNDERSTANDS THAT OUTSTANDING EXIMBANK LOANS TO CHILE TOTAL APPROXIMATELY DOLLARS 47 MILLION. TERMS OF THESE EXIMBANK

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 272393

LOANS SPECIFY THAT 50 PERCENT OF THE CARGO MAY BE PERMITTED TO TRAVEL ON (IN THIS CASE, CHILEAN) VESSELS IF THERE IS NO EVIDENCE THAT U.S. VESSELS ARE DISCRIMINATED AGAINST IN THE CHILEAN TRADE. MARITIME ADMINISTRATION IN USDOC ADMINISTERS THESE WAIVER PROVISIONS AND WOULD, OF COURSE, BE RELUCTANT TO ISSUE THE WAIVERS OR CONTINUE ANY EXISTING WAIVERS IF CONDITIONS REMAIN AS PRESENT, WITH CHILEAN VESSELS

GIVEN FIRST PREFERENCE ON ALL CHILEAN EXPORTS.

4. ANOTHER DISTINCT POSSIBILITY IS THAT U.S. LINES OR OTHER INTERESTED PARTY MIGHT BRING COMPLAINT BEFORE THE SPECIAL TRADE REPRESENTATIVE (STR) PURSUANT TO SECTION 301 OF THE 1974 TRADE ACT. THIS, IN FACT, HAS ALREADY HAPPENED IN THE CASE OF A DISCRIMINATORY ACTION AGAINST A U.S. LINE IN THE GUATEMALAN TRADE.

5. EMPASSY PLEASE REPORT GOC'S REACTION TO YOUR APPROACHES. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRADE DISCRIMINATION, MARINE TRANSPORTATION, LAW
Control Number: n/a
Copy: SINGLE
Draft Date: 18 NOV 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE272393
Document Source: CORE
Document Unique ID: 00
Drafter: SVSMITH:PST
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750401-0214
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751136/aaaabfrz.tel
Line Count: 126
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 75 SANTIAGO 7605
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 05 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <05 SEP 2003 by ElyME>; APPROVED <19 NOV 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: DISCRIMINATORY SHIPPING DECREE
TAGS: EWWT, CI
To: SANTIAGO
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006